

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEITH ROSARIO,)	
)	
Plaintiff,)	2:21-cv-208
)	
vs.)	
)	District Judge Robert J. Colville
WESTMORELAND COUNTY, PA;)	Magistrate Judge Maureen P. Kelly
WESTMORELAND COUNTY)	
COMMISSIONER; WARDEN WALTON;)	Re: ECF No. 56
DEPUTY WARDEN LOWTHER; DEPUTY)	
WARDEN SCHWARZ; LIEUTENANT)	
TOMASELLO; LIEUTENANT WOLFF;)	
SERGEANT GILLETTE; SERGEANT)	
BRADLEY; and JOHN DOE 1-6,)	
)	
Defendants.)	

ORDER OF COURT

Currently pending before the Court is the August 25, 2022 Report and Recommendation (ECF No. 57) issued by the Honorable Maureen P. Kelly. Judge Kelly’s Report and Recommendation recommends that the Court deny Plaintiff’s “Motion for Injunction and Restraining Order” (ECF No. 56). Plaintiff filed Objections (ECF No. 59) to Judge Kelly’s Report and Recommendation on September 9, 2022. This matter is ripe for disposition.

“The Federal Magistrates Act provides two separate standards of judicial review of orders on matters referred to magistrate judges.” *Alarmax Distributors, Inc. v. Honeywell Int’l Inc.*, No. 2:14-cv-1527, 2015 WL 12756857, at *1 (W.D. Pa. Nov. 24, 2015) (citing 28 U.S.C. § 636(b)(1)). A district court reviews objections to a magistrate judge’s decision on non-dispositive matters to determine whether any part of the order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). A district court may only modify or set aside those parts of

the order on non-dispositive matters that it finds to be clearly erroneous or contrary to law. *Id.* “A finding is ‘clearly erroneous’ when, ‘although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *Pennsylvania, Dep’t of Env’tl. Prot. v. Allegheny Energy, Inc.*, No. 2:05-cv-885, 2007 WL 2253554, at *1 (W.D. Pa. Aug. 3, 2007) (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985)). “A magistrate judge’s order is contrary to law ‘when the magistrate judge has misinterpreted or misapplied the applicable law.’” *Brandon v. Burkhardt*, No. 1:16-cv-177, 2020 WL 85494, at *2 (W.D. Pa. Jan. 7, 2020) (quoting *Doe v. Hartford Life & Accident Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006)).

Objections to a magistrate judge’s disposition of a dispositive matter are subject to de novo review before the district judge. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). The reviewing district court must make a de novo determination of those portions of the magistrate judge’s report and recommendation to which objections are made. *Id.* Following de novo review, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3).

Upon consideration of Judge Kelly’s August 25, 2022 Report and Recommendation and Plaintiff’s Objections thereto, and following a review of the relevant docket entries and the entire record in this matter, it is hereby ORDERED as follows:

The Court agrees with the well-reasoned analysis set forth in Judge Kelly’s Report and Recommendation, and the Court accepts and adopts Judge Kelly’s Report and Recommendation in its entirety as the opinion of the Court with respect to Plaintiff’s Motion for Injunction and Restraining Order. Plaintiff fails to set forth a sufficient basis for the extraordinary relief of a

preliminary injunction. Plaintiff's Objections to the Report and Recommendation are overruled.
Plaintiff's Motion for Injunction and Restraining Order is denied.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: October 3, 2022

cc/ecf: All counsel of record

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